

Charles B. Hendricks
Texas Bar No.09451050
Lyndel Anne Mason
Texas Bar No. 24058913
CAVAZOS, HENDRICKS,
POIROT & SMITHAM, P.C.
Suite 570, Founders Square
900 Jackson Street
Dallas, TX 75202
Direct: (214) 573-7344
Fax: (214) 573-7399
Email: Lmason@chfirm.com

Vivieon E. Kelley
Virginia Bar No. 44230
TROUTMAN SANDERS LLP
600 Peachtree Street, NE Suite 5200
Atlanta, GA 30308-2216
Phone: (404) 885-3838
Fax: (404) 962-6792
Email: vivieon.kelley@troutmansanders.com

Attorneys for Plantation Point Development, LLC and
Carlyle-Cypress Tuscaloosa, LLC

Attorneys for Plantation Point Development, LLC
and Carlyle-Cypress Tuscaloosa, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

IN RE:

CIRCUIT CITY STORES, INC., et al.,

DEBTORS

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CASE NO. 08-35653-KRH

Hearing Date: Jan. 16, 2009

Hearing Time: 10:00 am

**NOTICE OF JOINDER IN LANDLORDS' MOTION FOR REHEARING
AND/OR RECONSIDERATION AND/OR TO ALTER OR AMEND THE
JUDGMENT REGARDING PAYMENT OF RENT [Doc. No.1347]**

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

Pursuant to Notice of Motion And Hearing [Doc. 1366], Plantation Point Development, LLC and Carlyle-Cypress Tuscaloosa, LLC, by their counsel, hereby join in the Landlord's Motion For Rehearing And/Or Reconsideration And/Or To Alter Or Amend The Judgment Regarding Payment Of Rent [Doc. No. 1347] on the following grounds:

1. Movants are correct in their reading of Section 365 (d)(3). Sitting as trustees, these Debtors-In-Possession are required to "timely perform all the obligations of the debtor, except those specified in section 365(b)(2)...until such

lease is assumed or rejected.” Although the Debtors could have filed a motion and made a showing of “cause,” if the same existed, to extend their deadline for such performance beyond the 60-day period, these Debtors did not even seek such an extension. More than 60 days have elapsed since the Petitions were filed and thus November rent is due to all landlords, including Plantation Point, LLC and Carlyle-Cypress Tuscaloosa, LLC who are owed \$63,726.95 and \$56,385.06 respectively for November rent alone. There is no legal justification for not compelling immediate payment of these operating costs.

2. The Debtors could not derive any income from their operations without use of the leasehold properties, thus these payment obligations were clearly actual and necessary administrative obligations. It is inequitable for this Court to permit the Debtors to burden the landlord creditors with this failure to pay, while continuing to pay other operating expenses and enjoying the protections afforded to them under Chapter 11. The Debtors’ argument that their lenders did not include the November rents in their cash collateral budgets is disingenuous. Debtors’ counsel knew the day that this case was filed that rent was due at all locations occupied by their clients and they chose to spend revenue on other operating expenses, ignoring this obligation.

3. If there is insufficient cash on hand to pay the November rents, then no administrative expenses should be paid until the Debtors are current with their post-petition rent obligations. The rights of the landlords should not be further jeopardized by the discriminatory practices of the Debtors, favoring some post-petition creditors over others.

4. As the law has been clearly presented in the Motion and Joinders, and oral arguments will be adequately presented by Movants, Plantation Point, LLC and Carlyse-Cypress Tuscaloosa, LLC will not also present oral argument at the hearing with respect to this matter.

Respectfully submitted,

/s/ Vivieon E. Kelley
Vivieon E. Kelley
Virginia Bar No. 44230
TROUTMAN SANDERS LLP
600 Peachtree Street, NE Suite 5200
Atlanta, GA 30308-2216
Phone: (404) 885-3838
Fax: (404) 962-6792
Email: vivieon.kelley@troutmansanders.com

and

Lyndel Anne Mason
Texas Bar No. 24058913
CAVAZOS, HENDRICKS,
POIROT & SMITHAM, P.C.
Suite 570, Founders Square
900 Jackson Street
Dallas, TX 75202
Direct: (214) 573-7344
Fax: (214) 573-7399
Email: Lmason@chfirm.com

Appearing as Attorneys for Plantation
Point Development, LLC and Carlyle-Cypress
Tuscaloosa, LLC on this Motion.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the **Notice of Joinder in Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of Rent [Doc. No.1347]** was filed and served this 13th day of January, 2009 (i) electronically on the "2002" and "Core" lists; and (ii) through the Court's ECF System.

/s/ Vivieon E. Kelley
Vivieon E. Kelley